

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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LORRAINE MASCIARELLI,

Plaintiff,

INDEX NO. 22-cv-7553

-against-

NEW YORK CITY DEPARTMENT OF  
EDUCATION,

Defendant.

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**AFFIRMATION OF AUSTIN  
GRAFF IN OPPOSITION TO  
THE DEFENDANT'S  
MOTION TO DISMISS**

**AUSTIN GRAFF**, an attorney admitted to practice law before this Court, who is not a party to this Action, affirmed to be true under penalties of perjury says:

1. I am associated with The Scher Law Firm, LLP, the attorneys for the Plaintiff LORRAINE MASCIARELLI ("Plaintiff") in the above-entitled Action, and am familiar with the relevant facts and circumstances surrounding the allegations that comprise this litigation based upon the records maintained by my office regarding this matter. I submit this Affirmation in opposition to the Defendant's Motion to Dismiss pursuant to FRCP Rule 12(b)(6).

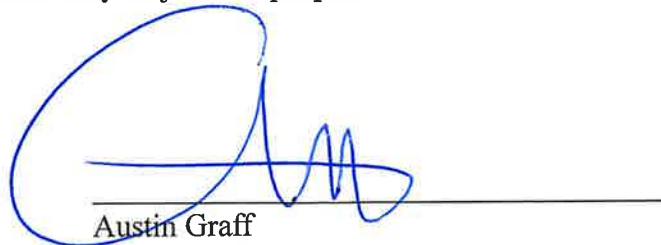
2. The Plaintiff relies upon the following exhibits in support of their Motion:

- (a) **Exhibit A**, a copy of the August 24, 2021 Vaccine Mandate;
- (b) **Exhibit B**, a copy of the Declaration of Impasse;
- (c) **Exhibit C**, a copy of the deposition transcript of Eric Eichenholtz;
- (d) **Exhibit D**, a copy of the City's reasonable accommodation notice regarding testing;
- (e) **Exhibit E**, a copy of the Mayor's February 6, 2023 Press Release;
- (f) **Exhibit F**, a copy of the *Labarbera* decision; and
- (g) **Exhibit G**, a copy of the New York Post article regarding "rubber rooms"

3. For the reasons argued in the accompanying Memorandum of Law, the Defendant's Motion to Dismiss should be denied,

**WHEREFORE**, the Plaintiff respectfully request that the Court deny the Defendant's Motion, as well as such other and further relief as may be just and proper.

Dated:      Garden City, New York  
                July 14, 2023



A handwritten signature in blue ink, appearing to read "Austin Graff", is enclosed within a large, roughly circular blue outline. A horizontal line extends from the right side of the signature area.